

Office of Chief Counsel
Internal Revenue Service
memorandum

CC:NER:NED:BOS:TL-N-6232-98
MJGormley

date:

to: Chief, Examination Division
Attn: Richard Stanton, Group Manager

from: District Counsel, New England District, Boston

subject: Extension of the Statute of Limitations Pursuant to I.R.C.
6501(c) (4) (B)

DISCLOSURE STATEMENT

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the recipient of this document may provide it only to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Examination, Appeals, or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

You have requested our advice regarding the validity of a consent to extend the statute of limitations, obtained after December 31, 1999, which did not follow the requirements of I.R.C. section 6501(c) (4) (B). In this case, the statute of limitations for the taxable year [REDACTED] will expire on [REDACTED]. You have solicited and obtained, a Form 872 from [REDACTED], the Tax Matters Partner of the [REDACTED] extending the statute of limitations until [REDACTED].

In accordance with I.R.C. section 6501(c) (4) (B), taxpayers

must be advised of their right to refuse to extend the statute of limitations period, of their right to request that the extension period be limited to particular issues held open for further examination or appeal, and their right to request the statute of limitations be limited to a specific date. The taxpayer must be notified of these rights each time an extension is issued. As part of RRA 98 training Service personnel were instructed that this requirement could be satisfied by informing the taxpayer, either orally or in writing, of their rights as outlined above. Service personnel were advised to secure consents by sending Form Letter 907(DO), Letter 907(SC), or Letter 967. See IRM 4541.1 and IRM 121.2.22.3. In addition, Service personnel were advised that they could provide the taxpayer with a copy of Publication 1035, "Extending the Tax Assessment Period". Service personnel were directed to document their actions.

In this case, the consent extending the statutory period was obtained from [REDACTED] without providing him with a copy of Publication 1035 and without sending him Form Letter 967. You have advised us that a follow-up letter was sent to [REDACTED], after the Form 872 was obtained. We have requested but have not received a copy of this letter. Based on your verbal description, the letter requested [REDACTED] waive his right to receive Publication 1035 and Form Letter 967. It is not known whether the letter advised [REDACTED] of his rights under I.R.C. 6501, as amended. You have not yet received a response from [REDACTED].

The issue of the validity of statute extensions solicited and secured after December 31, 1999 under RRA'98 was recently reviewed by the National Office. It was noted that courts may not sustain the validity of extensions obtained where there was not strict compliance with the provisions of I.R.C. § 6501(c)(4)(B). As a precautionary measure, instructions were recently transmitted to the Assistant Commissioner (Examination), the National Director of Appeals, and all Service Center Directors. In those instructions, Chief Counsel has taken the position that statute extensions obtained after December 31, 1999, are valid if any of the following apply:

1. The Form Letter 907(DO), (SC) or 967 was used;
2. Publication 1035¹ was provided to the taxpayer;
3. The taxpayer refused to sign an unrestricted extension, Form 872-A, and the statute was extended on Form 872 limiting the extension period or the issues;
4. The taxpayer refused to sign a restricted extension,

¹ Either the 12/99 revision or the two prior revisions may be used.

Form 872, as originally prepared by the Service, and instead signed one containing additional restrictions, such as a shorter time period or fewer issues²;

5. Service personnel orally advised the taxpayer or representative of all of the provisions of I.R.C. § 6501(c)(4)(B) and documented this action contemporaneously in writing on Form 9984 or elsewhere in the administrative file.

If the extension solicited after December 31, 1999 under I.R.C. § 6401(c)(4) does not meet one of the above five criteria, the validity of the extension may be challenged.

Based on the information provided by you, given that there are approximately three months remaining on the statute and considering the administrative background of this case, it is recommended that you obtain a new Form 872 under circumstances that comply with the requirements of I.R.C. 6501(c)(4)(B). A new consent should be solicited, utilizing Form Letter 967 and enclosing a copy of Publication 1035.

If you have any further questions regarding this matter, please contact Michele J. Gormley at 617/565-7858.

MAUREEN T. O'BRIEN
Assistant District Counsel

By: _____
MICHELE J. GORMLEY
Senior Attorney

cc: Field Service
Assistant Regional Counsels (TL)

² See IRM 22.8.4(1).